***THE HONOURABLE SRI JUSTICE V.V.S.RAO**

+WRIT PETITION Nos.20854, 20861 and 20918 of 2005

%27-09-2005

W.P.20854 of 2005

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Sri Kanaka Durga Agnikula Kshatriya Sand Quarry,

Boatsmen & Fishermen Cooperative Society Ltd., Sompally,

Razole Mandal, East Godavari District

..PETITIONER

Vs.

$ The District Panchayat Officer and District Member & Convenor, District Level Sand Auction Committee, Kakinada, East Godavari District and another.

..RESPONDENT

W.P.No.20861 of 2005

Ch.Venkateswara Rao, S/o Surya Rao, R/o Weavers Colony,

Palakol, West Godavari District.

…PETITIONER

Vs.

The District Panchayat Officer and District Member & Convenor, District Level Sand Auction Committee, Kakinada, East Godavari District and another.

…RESPONDENTS

W.P.No.20918 of 2005

K.Mallikarjuna Rao, S/o Sri K.Satyanarayana,
R/o Podagattalapalli Village, Ravulapalem Mandal,

East Godavari District.

…PETITIONER

Vs.

The Principal Secretary, Government of Andhra Pradesh, Industries and Commerce Department, Secretariat, Saifabad, Hyderabad and others.

…RESPONDENTS

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! COUNSEL FOR PETITIONER (in W.P.Nos.20854 and 20861 of 2005) : Mr.Badana Bhaskara Rao

! COUNSEL FOR PETITIONER (in W.P.No.20918 of 2005) : Sri Nuty Rama Mohana Rao

^ COUNSEL FOR RESPONDENTS : G.P. for Panchayat Raj and Rural Development

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>HEAD NOTE:

?CASES REFERRED:

THE HON'BLE SRI JUSTICE V.V.S.RAO

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WRIT PETITION Nos.20854, 20861 AND 20918 OF 2005

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COMMON ORDER:

These three writ petitions were heard together. This common order shall dispose of the three writ petitions.

The petitioner in W.P.No.20854 of 2005 is a cooperative society. The society became highest bidder in the auction conducted by the respondents for leasing out the right to quarry sand in reach 44 at Razole in Godavari River. As per the conditions, the petitioner was required to pay the bid amount of Rs.1,57,500/- (after allowing ten per cent concession as it is a Boatsmen Society) in four instalments. The petitioner allegedly paid all the instalments. Be that as it is, after the petitioner paid a sum of Rs.80,000/- reach 44 was handed over to the petitioner. It is alleged that for one reason or the other, the petitioner could not conduct sand query operations for a period of about two months from 26.12.2004 to 25.02.2005. Therefore, the petitioner submitted a representation on 12.09.2005 seeking refund of proportionate lease amount or extension of lease for the period during which he could not carry on operations. When first respondent issued an auction notice dated 13.09.2005 proposing to conduct auction for the period from 01.10.2005 to 30.09.2006, the petitioner filed the present writ petition.

The petitioner in W.P.No.20861 of 2005 participated in the auction conducted by the respondent on 19.10.2004 for leasing out the right to quarry sand in reach 36 of Godavari River at P.Gannavaram. The petitioner allegedly paid the entire amount of Rs.14,00,000/-. According to the petitioner, reach 36 was handed over to him after confirmation of the lease by competent authority but for various reasons the petitioner could not carry on the operations for a period of two months. Therefore, he submitted representation on 09.09.2005 seeking refund of lease amount and extension of lease. When the respondents issued an auction notice dated 13.09.2005, the petitioner filed the present writ petition

The facts in brief in W.P.No.20918 of 2005 are as follows. The District Level Committee (DLC), East Godavari through its Member Convener, namely, District Panchayat Officer (DPO) issued auction notice on 14.09.2004 for leasing out the right to quarry sand in Godavari River. The entire length of sand bearing area of

Godavari River was divided into reaches and these reaches were put to auction in packages. As many as 39 packages were proposed for auction on 30.09.2004 for leasing out the right to quarry sand for a period from 01.10.2004 to 30.09.2005. The successful bidder will have right to collect/realize seigniorage fee for the sand removed from a particular reaches in a particular package. Package No.3 consists of two reaches i.e. reach 6 and reach 7. Reach 6(a) is from 19/0 to 21/690 km with ramp at 20/0 to 20/2 km at Ubalanka village. Reach 6(b) is from 21/690 to 24/0 km with ramp at 22/6 to 23/2 km. Reach 7 is at Ravulapalem from 24/0 to 26/0 km with ramp at 25/4 to 25/6 at Komarajulanka. Both these reaches are at left bank of Gowthami Godavari River. In the auction conducted, the petitioner became highest bidder at Rs.99,99,909/-. The auction was confirmed by the confirming authority, namely, District Collector on 28.10.2004 after the petitioner paid a sum of Rs.45,62,900/- as first instalment. The confirming authority directed the petitioner to pay the balance amount in instalments.

The petitioner carried on sand quarry operations up to December, 2004. When he did not pay the fourth instalment amount of Rs.25,00,000/-, the DPO issued a notice dated 25.12.2004 informing that the lease would be cancelled if the petitioner fails to pay the amount towards the lease. Assailing the same, the petitioner by filing writ petition being W.P.No.2961 of 2005, *inter alia,* contending that as per the confirmation proceedings dated 28.10.2004, the bidder is required to pay the fourth instalment amount on or before 31.05.2005 and that the DPO was not justified in issuing the notice on 25.12.2004. Noticing the fact that the petitioner paid three instalments and that the petitioner agreed to furnish the bank guarantee by 28.02.2005, this Court by an order dated 08.02.2005 disposed of the writ petition. This Court directed the respondents not to implement the notice challenged therein and not to take coercive steps on condition of petitioner giving a bank guarantee for the balance amount payable on or before 28.02.2005. This Court also observed that if the petitioner fails to comply with the condition imposed by this Court, it shall be open to the respondents to take necessary action against the petitioner by implementing the notice dated 25.12.2004.

The petitioner made a representation to the District Collector on 22.01.2005 alleging that he is not utilizing the Merlapalem and Komarajulanka reaches due to highest margin of land with heavy water and lack of sand, that due to bridge work on National Highway No.5 undertaken by the Government from 13.01.2005, he is not able to carry on any operations in Ubalanka reach, that the ramps provided for the petitioner do not enable the movement of vehicles, that due to innocence he bid for about Rupees One Crore and requested the District Collector to refund half of the amount i.e., Rs.50,00,000/-. The petitioner also made another representation to the District Collector on 07.02.2005 alleging that in the month of September due to heavy water flow in Godavari River, it was not possible to identify the ramp area, that he was able to put only two ramps to use out of four ramps allotted, that he was not able to lay road on the other two ramps due to heavy water by reason of which he is getting losses and therefore he requested to cancel the Merlapalem and Komarajulanka sand reaches expressing his no objection for re-auction for the said reaches. He also requested to reduce the seigniorage fee for Komarajulanka and

Merlapalem reaches.

When he did not receive any response, the petitioner filed W.P.No.5886 of 2005 seeking a direction to the respondents to consider and dispose of his two representations referred to hereinabove. In this writ petition, he alleged that the River Conservator, the fourth respondent herein, submitted a report to DPO on 18.03.2005 to consider the request of the petitioner for reducing the seigniorage fee for Merlapalem and Komarajulanka reaches as the ramps for the said reaches are found to be not feasible and suitable for lifting the sand and are conducive for procuring sand. The petitioner prayed for granting reduction/remission in the seigniorage fee and lease amount payable for package No.3 of Gowthami Godavari River. By an order dated 22.03.2005, this Court disposed of the writ petition directing the DLC represented by DPO to consider and dispose of the representations submitted by the petitioner on 22.01.2005 and 07.02.2005. After considering the representations, the District Collector (Panchayatraj Wing), East Godavari by endorsement dated 11.04.2005 rejected the representations. Therefore, the petitioner filed the present writ petition, when a fresh auction notice was published on 13.09.2005.

In these writ petitions, the petitioners in effect pray for a direction to the respondents to grant remission in the lease money or seigniorage fee, and alternatively seek a direction to the respondents to grant extension of lease for the period during which the petitioners could not carry on sand quarry operations or realize seigniorage fee. As noticed herein above, when the period of lease is about to expire on 30th September, 2005, the DPO issued auction notice dated 13.09.2005 proposing to conduct auction for leasing out the right to collect seigniorage fee in as many as 48 sand quarry reaches in Godavari River divided into 25 packages. The auction is proposed to be conducted on 28.09.2005 to lease out the right for the period from 01.10.2005 to 30.09.2006. Insofar as package No.3 is concerned, for reaches 6 and 7 the length of the reach and the ramp points are same as they were during the last year and therefore, in W.P.No.20918 of 2005, the petitioner also seeks a declaration that the action of the respondents in not confirming the reaches and ramp points for package No.3 in accordance with those identified by the River Conservator as bad in law.

The learned counsel for the petitioner in W.P.No.20918 of 2005, Sri Rama Mohana Rao, has taken this Court through all the documents annexed to the writ petition, the relevant rules in A.P.Minor Mineral Concession Rules, 1966 (for short, the Rules), earlier two orders of this Court in writ petitions filed by his client, and submits that in the auction conducted in 2004, the ramp points were altered/changed to the detriment of the petitioner and therefore DLC has to reconsider their decision and without doing so, the proposed auction is arbitrary and illegal. Secondly, he would urge that as the ramp points were changed by the DLC while confirming the lease during the last year, the petitioner could not carry on operations due to the water logging and unfeasibility in maintaining the ramps, the petitioner is entitled for remission of the seigniorage fee or extension of lease period. Lastly, he would submit that the DPO has no independent power under the Rules and he cannot

notify the ramp points without consulting the River Conservator. The learned counsel for the petitioners in other writ petitions, Sri Bhaskara Rao, while adopting above submissions would urge that the petitioners in both the writ petitions could not carry on sand operations and realize the seigniorage fee for a period of two months due to floods and Tsunami and therefore the petitioners are entitled to seek the relief as prayed in the writ petition.

The learned Assistant Government Pleader for Panchayat Raj has placed reliance on Rules 9-B to 9-K of the Rules and submits that the Rules do not permit to grant remission to any bidder and that the petitioners knowing fully well participated in the auction and they cannot now resile from the contract to evade the payment of balance amount. He would also submit that the petitioners have no right for extension of lease beyond 30.09.2005.

The only question that arises for consideration is whether the petitioners have any right to approach this Court under Article 226 of Constitution of India claiming the relief as they do?

In W.P.Nos.20854 and 20861 of 2005, it is not denied that whatever be the date of auction in the last year, the lease is for the period ending with 30.09.2004. It is also not denied that Rules 9-B to 9-X of the Rules govern the lease of the right to quarry sand or realize seigniorage fee. In both these writ petitions, after the petitioners made initial payment they were handed over the reaches for the purpose of quarrying sand. Until recently, the petitioners never made any complaint that they could not carry on the operations due to heavy rains or the Tsunami. It is only on 09.09.2005/12.09.2005 that they made representations to the respondents seeking refund of the amount, presumably after coming to know that with effect from 01.10.2005 the new leases would come into effect. Whether existing lessees have a right to seek extension of lease? This is a question common to all the writ petitions, which has to be considered after considering the points raised in W.P.No.20918 of 2005.

The petitioner in W.P.No.20918 of 2005 earlier filed W.P.No.2961 of 2005 challenging a notice demanding the payment of the final instalment and W.P.No.5886 of 2005 seeking a direction to the respondents to consider his representations. In the representation dated 22.01.2005, no doubt the petitioner raised the contention that out of four ramps he was allotted, he was not able to operate two ramps in relation to Merlapalem and Komarajulanka reaches allegedly for the reason that there was highest margin of land with heavy water and lack of sand. At that stage, the petitioner never raised any contention regarding the fixation of ramp points for the three reaches included in package No.3. Be that as it is, in both the writ petitions no effort was made by the petitioners even to make out the case as is now projected in the present writ petition.

The auction notice was issued on 14.09.2004 inviting participation in the auction for leasing out for the period from 01.10.2004 to 30.09.2005. In package No.3, there are reaches 6(a) and 6(b) and reach 7. For reach 6(a) (19/0 to 21/690 km) the ramp was

indicated between 20/0 to 20/2 km at Ubalanka village. For reach 6(b) (21/690 to 24/0 km) the ramp was fixed between 22/6 to 23/2 km. For reach 7 Ravulapalem (24/0 to 26/0 km) the ramp was fixed between 25/4 to 25/6 at Komarajulanka. When the petitioner became highest bidder, the confirming authority issued proceedings on 28.10.2004 permitting the petitioner to transport sand subject to conditions mentioned therein in the confirmation proceedings (a) for reach 19/0 to 21/690 km, the ramp was at 20/0 to 20/2 km at Ubalanka and (b) for reach 21/690 to 24/0 km, the ramp was 22/6 to 23/2 km; and for reach 7 Ravulapalem 24/0 to 26/0 km, the ramp was at 25/4 to 25/6 at Komarajulanka. For Merlapalem reach 16/0 to 18/0 km, the ramp is at 17/8 to 18 km Merlapalem.

A careful reading of the auction notice dated 14.09.2004 and the proceedings dated 28.10.2004 would belie any submission that the ramp was altered by the DLC/DPO, which was contrary to the ramp fixed by the fourth respondent, who is River Conservator. The River Conservator by letter dated 18.03.2004 opined that the ramps at Merlapalem and Komarajulanka are unworkable. The same does not however support the view that the DLC has fixed the ramps for reaches 6(a) and 6(b), and reach 7 in package No.3, which are different from the ramp points fixed by River Conservator.

At this stage, it is necessary to refer to the Rules which deal with the lease of sand bearing areas. Sub-rule (1) of Rule 9-B empowers the lease of sand bearing areas by sealed tender cum public auction for specified period not exceeding two years with a yearly enhancement of ten per cent of the knocked down amount. Clause (a) of sub-rule (2) of Rule 9-B provides that DLC is competent to club or subdivide reaches in consultation with River Conservator with regard to reaches falling under River Conservancy Act, 1884. Rule 9-B (2)(b) of the Rules is to the effect that it shall be competent to the DLC to discharge any matter or problem arising during the course of implementation of the Rules. Rules 9-C to 9-K speak about the method and manner of conducting auction. As per Rule 9-K, successful tenderer or bidder shall have no claims for any compensation or extension of the lease period for the delay caused by himself in paying the required amounts and executing the agreements. Rule 9-L provides for the grant of temporary leases “to protect monetary loss to the Government”. Proviso to Rule 9-L empowers the DPO to permit the earlier lessee to continue quarry operations on payment of proportionate amounts with ten per cent enhancement for a period not exceeding sixty days. Rule 25 of the Rules requires the competent authority to consult the River Conservator before issuing notice of public auction to lease out the right to quarry sand in the river beds.

A reading of Rule 9-B(2)(a) and Rule 25 of the Rules does not support the view that DLC is not empowered to fix the ramp points. What all required under the Rules is to consult the River Conservator with regard to the reaches falling under the River Conservancy Act. Even according to the petitioner, the ramp constructed is a temporary structure and it is likely to become dysfunctional and whither away by constant use during the period of the lease. That is the reason why the auction notice provides for distance range in the village where a ramp can be provided. As seen from the notification, the distance range where the ramp can be provided for

the lessee is between two points is minimum 0.2 km. Therefore, there is no substance in the submission that there is no power vested in the DLC to change the ramp points or that DLC has changed the ramp points while confirming the lease in favour of the petitioners.

As noticed supra, this Court disposed of the W.P.No.5886 of 2005 directing the DLC to dispose of the representations submitted by the petitioner on 22.01.2005 and 07.02.2005. A reading of the endorsement dated 11.04.2005 issued by the District Collector would show that the District Collector directed Divisional Panchayat Officer to submit a report. The Divisional Officer visited all the places, recorded the statements of Panchayat Secretaries, and Sarpanch, and submitted a report dated 01.04.2005. The endorsement reveals that the Divisional Officer reported that the petitioner is lifting 200 tractors of sand per day at Komarajulanka village, is transporting heavily at Ubalanka/ Ravulapalem, that there is sufficient pathway situated from the ramp point at Komarajulanka to river bund and from River bund to Ravulapalem. He also reported that at no point of time the villagers objected the sand transportation. After considering the report, the representation was rejected. The District Collector also opined that initially when the ramp points were fixed, the Executive Engineer, Godavari Head Works (River Conservator) and Assistant Director of Mines and Geology identified ramp points but the River Conservator submitted another report deviating from earlier report, which is not sustained on merits. Therefore, it would be futile to contend that respondents did not take into consideration the report submitted by the River Conservator. As rightly observed by the District Collector, the petitioner operated the sand quarry reach for a period of six months and when he was required to pay the fourth instalment of Rs.25,00,000/- he started raising all objections though he was regularly removing sand from the reaches allotted to him upto 30.09.2005. In view of these reasons, the submission of the learned counsel for the petitioner cannot be accepted.

The representations of petitioner in W.P.No.20918 of 2005 were rejected by endorsement dated 11.04.2005. Immediately, the same was so challenged. Petitioner continued to operate sand bearing reaches leased to him. When fresh auction is slated to 28.09.2005, petitioner approached this Court. This writ petition is therefore not bonafide.

A reading of the Rules, as noticed hereinabove, would show that the proviso to Rule 9-L of the Rules confers a limited right on the existing lessees to continue the lease for a period of sixty days on payment of ten per cent enhanced lease amount. That situation would arise only when the sand reach is not put to auction for the subsequent year. Except to the limited extent, a lessee who is granted the right to quarry sand for a specified period cannot claim any right for extension of lease. The Rule
9-B(1) of the Rules is only enabling provision under which the competent authority can grant lease for a period of two years. In these cases, the leases were granted to the petitioners only upto 30.09.2005 and therefore they have no right to compel the respondents to extend the lease whatever the reason be. The petitioners knowing fully well the business proposition and presumably having inspected the reaches and ramp points, became highest bidders and they cannot now turn around after

working the leases for considerable period and seek the relief which is not contemplated either under the Rules or the terms of the Contract. The respondents have acted well within the jurisdiction and have not violated the Rules.

These writ petitions are devoid of any merit and are accordingly dismissed.

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(V.V.S.RAO,J)

.09.2005.

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To

(One fair copy to the Hon'ble Mr. Justice V.V.S.Rao, for His Lordships kind perusal)

1. The District Panchayat Officer and District Member & Convenor, District Level Sand Auction Committee, Kakinada, East Godavari District
2. The District Collector, East Godavari District, Kakinada.
3. The Principal Secretary, Government of Andhra Pradesh, Industries and Commerce Department, Secretariat, Saifabad, Hyderabad.
4. The Executive Engineer, Godavari Head Works Division, Dowlaiswaram, East Godavari District.
5. 2 CCs to the G.P. for Revenue, High Court Buildings, Hyderabad (OUT).
6. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
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